

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
23.03.2026PRONOUNCED ON
12.06.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 893 of 2012

Tiruppur Exprt Knitwear
Industrial Complex TEA Nagar, Mudalipalayam
Tiruppur.

..Appellant(s)

Vs

Jayalakshmi
W/o Mounagurusamy Proprietrix Power SYS Roof
42E, Velasamy Konar Garden, Kattabomman St
Velandipalayam Coimbatore-641 025.

..Respondent(s)

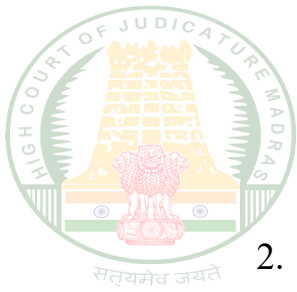
PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Additional District Judge & Fast Track Court-IV, Coimbatore at Tiruppur made in O.S.No.598 of 2008, dated 29.02.2012.

For Appellant(s): Mr.S.Parthasarathy
Senior Counsel
for Mr.P.Dinesh Kumar

For Respondent(s): Mr.P.Saravana Sowmiyan

JUDGMENT

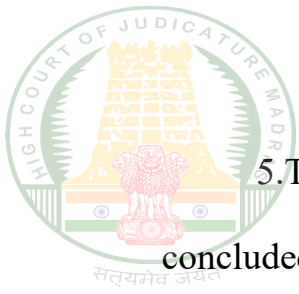
The present first appeal has been filed challenging the decree and judgement dated 29.02.2012 made in the O.S. No. 598 of 2008 on the Learned Additional District and Fast Track Judge, Tiruppur.



2. The suit was instituted by the plaintiff for recovery of money against the defendant. The plaintiff contended that originally a partnership firm had submitted a proposal dated 24.12.2003 to the defendant for providing technical consultancy services, including supervision and monitoring of installation and execution of an electrical distribution network. The said offer was accepted, and work was entrusted to the plaintiff. Subsequently, the partnership firm was dissolved, and the plaintiff took over the business as a sole proprietrix along with all assets, liabilities, and goodwill.

3. The plaintiff claimed to have executed the work as agreed and raised several invoices towards consultancy, supervision, and monitoring charges amounting in total to a substantial sum. The defendant made part payments on different dates through cheques, which were duly acknowledged. Despite repeated demands and reminders, a significant balance amount remained unpaid.

4. The plaintiff asserted that the defendant had fully benefited from the services rendered but failed to discharge its liability. Hence, the suit was filed for recovery of the balance amount along with interest at 6% per annum and costs.



5. The defendant resisted the suit by denying the existence of any concluded and enforceable contract between the parties. It was contended that the alleged offer dated 24.12.2003 was never formally accepted and lacked essential terms, particularly regarding the quantum of consideration.

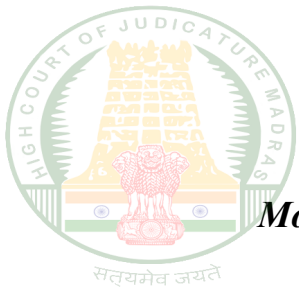
6. The defendant contended that there was no privity of contract and that the plaintiff had unilaterally undertaken certain works without any binding agreement. It was further stated that the plaintiff's quotation was excessively high and subject to negotiation, and therefore no final agreement was reached. The defendant admitted making certain payments but maintained that such payments were only ad hoc and not in acknowledgment of any legal liability.

7. The defendant also alleged that the work carried out by the plaintiff was not of the required standard and was incomplete. It was contended that the bills raised by the plaintiff were arbitrary and not supported by any contractual obligation. On these grounds, the defendant prayed for dismissal of the suit.

8. On the aforesaid pleadings the following issues were framed:-

1. Whether the plaintiff is entitled for recovery of money as prayed for?

2. Whether there was any dealing or privity of contract between the plaintiff and defendant?



3. *Whether the suit is not bad for non-joinder of Mounagurusamy?*

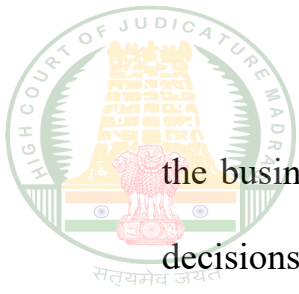
4. *Whether the bill raised by the plaintiff was not unilateral one?*

5. *Whether the plaintiff is not entitled to claim a percentage of project cost without completion of the project?*

6. *To what Reliefs?*

9. On the Plaintiffs' side, PW1 was examined as the sole witness and documents Ex. A1 to Ex. A48 were marked. On the Defendants' side, DW1 and DW2 was examined as witnesses and documents Ex. B1 to Ex. B39 were marked.

10. On Issue 1, the Trial Court held that the plaintiff is entitled to recover the suit amount as the contractual relationship and rendering of services were proved through documentary evidence, particularly Ex.A1 and subsequent correspondence. The Court found that though the contract originated when the concern was a partnership firm, the same was dissolved under Ex. A20 and the plaintiff, as sole proprietor, validly took over the assets and liabilities and continued the business. The objection under Section 69(2) of the Partnership Act was rejected since such plea was not properly raised and, in any event, dissolution does not extinguish the right to realise dues. In this regard, the Court relied on **2010 (4) CTC 58 – Shree Gomathy Shankar Transports v. State of Karnataka** to hold that dissolution does not bar recovery of amounts due and



the business may continue for realization of assets. The Court also referred to decisions (*AIR 1984 Madras 47*) *N.A. Munavar Hussain Sahib and Anr Vs.*

E.R Narayanan & Ors. and 2007 (1) MLJ 623 to hold that rights of a dissolved firm can be enforced by the person in whom such rights vest. Since the plaintiff proved execution of work and the defendant failed to disprove liability, the suit claim was held maintainable and recoverable.

11. On Issue 2, the Trial Court held that there was clear privity of contract between the plaintiff and defendant. It was observed that the defendant had dealt with the concern “Power Sys Roof” and continued such dealings even after it became a proprietorship under the plaintiff. Exhibits Ex. A3 to Ex. A18 and payment records Ex. A4 to Ex. A6 demonstrated continuous dealings and acknowledgment of the plaintiff’s role. The Court held that merely because the defendant initially dealt through Mr. Mounagurusamy does not negate privity, as he acted only on behalf of the plaintiff concern and not in his independent capacity. The Court emphasised that the defendant, having accepted services and made payments, cannot later deny privity. Thus, both express dealings and conduct established a binding contractual relationship.

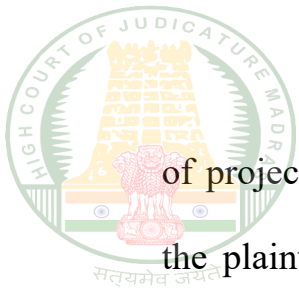
12. On Issue 3, the Trial Court held that the suit is not bad for non-joinder of Mounagurusamy. It was observed that he was only an employee/representative who acted on behalf of the plaintiff concern and did



not have an independent contractual right against the defendant. The Court held that a necessary party is one in whose absence no effective decree can be passed, and since the entire claim was between the plaintiff and defendant, Mounagurusamy was neither a necessary nor proper party. The Court further noted that he himself had not asserted any independent claim, and therefore, the objection of non-joinder was rejected.

13. On Issue 4, the Trial Court rejected the defendant's contention that the bills from Ex. A 7 to Ex. A 10 were unilateral. The Court observed that the bills clearly contained details of project cost and consultancy charges calculated as per Ex. A1 terms. Importantly, the defendant had not specifically denied the project cost mentioned in the bills, nor produced any alternative accounts or records. The Court held that if the figures were incorrect, the defendant ought to have produced contrary evidence, which it failed to do. It was also noted that the project cost reflected in the bills represented the cost up to respective stages, and the defendant never disputed those figures contemporaneously. Therefore, the Court accepted the bills as valid and held that they were not unilateral but supported by evidence and conduct of parties.

14. On Issue 5, the Trial Court held that the plaintiff is entitled to claim consultancy and supervision charges even if the project was not fully completed. The Court found that under Ex. A 1, the plaintiff was entitled to 5%



of project cost for supervision and monitoring, and the defendant had allowed the plaintiff to perform such services. The Court observed that there was no contractual condition stating that payment was contingent upon completion of the entire project. It further held that once services were rendered, the defendant cannot refuse payment on the ground of non-completion. The Court also rejected reliance on the technical committee report Ex. B9, holding that it was unilaterally constituted without notice to the plaintiff and therefore not binding. The Court emphasised that the defendant cannot unilaterally reduce remuneration after accepting services. Thus, the plaintiff was held entitled to claim proportionate fees for services rendered up to the stage of work done.

15. Based on the findings on all issues, The Court held that the claim arises out of contractual obligations under Ex.A1 and since the defendant failed to disprove liability, the plaintiff is entitled to the amount claimed. With respect to interest, the Court awarded 6% per annum, observing that even in the absence of a specific contractual clause, reasonable interest can be granted considering usage and principles under the Indian Contract Act. Accordingly, the trial Court decreed the suit holding that the plaintiff is entitled to recover the amount due along with interest.

16. Heard Mr. S. Parthasarathy, the learned Senior Counsel for the appellants and Mr. Saravana Sowmiyan, the learned counsel for the



respondents.

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17. The learned counsel for the appellant/defendant would submit that the judgment and decree of the Trial Court are wholly unsustainable both in law and on facts, being contrary to the provisions of the Indian Contract Act, the Partnership Act, and settled principles governing enforceability of contracts and recovery claims.

18. It was contended by the Learned counsel that the Trial Court erred in holding that a concluded and enforceable contract existed between the parties based solely on Ex.A1, which is merely a proposal lacking essential contractual elements such as certainty of consideration and unequivocal acceptance, and therefore fails to satisfy the mandatory requirements under Sections 3, 7, and 10 of the Indian Contract Act 1872,

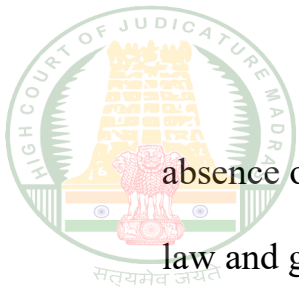
19. The learned counsel for the appellant submits that there was no written acceptance of the offer and, in fact, the evidence on record clearly shows that the quotation was considered excessive and subject to negotiation, and the defendant only permitted the plaintiff to render services on an ad hoc and provisional basis pending finalisation of rates, which cannot be construed as acceptance in law. It is further contended that the Trial Court failed to properly appreciate the scope and effect of Ex.A3 read with Ex.A1, as the



correspondence clearly indicates that the alleged offer was incomplete and never crystallised into a binding agreement, and reliance is placed on the settled principle that mere performance or permissive conduct does not amount to acceptance of contractual terms, particularly where consideration is uncertain, and the Trial Court erred in invoking implied contract without satisfying legal thresholds.

20. The learned counsel for the appellant further submits that the Trial Court gravely erred in holding that there existed privity of contract between the plaintiff/ respondent and defendant/appellant, when the consistent case of the defendant/appellant was that all dealings were with one Mounagurusamy, who acted independently and not as an agent of the plaintiff/respondent, and in the absence of proof of authorization or agency, the plaintiff/respondent cannot claim contractual rights, and therefore the finding on privity is perverse and contrary to evidence.

21. The learned counsel for the appellant strongly contends that the suit is barred under Section 69(2) of the Partnership Act 1932, as the original contract under Ex.A1 was entered into by an unregistered partnership firm, and the subsequent conversion into a proprietorship was neither communicated nor legally proved, and hence the present plaintiff cannot enforce the contractual claim; the Trial Court erred in rejecting this contention on the ground of



absence of specific pleading, as the bar under Section 69(2) is a pure question of law and goes to the root of maintainability.

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22. The appellant further argues that the bills raised under Ex.A7 to Ex.A10 are wholly unilateral, arbitrary, and unsupported by any agreed terms, and the Trial Court failed to consider that the defendant had never accepted the rates mentioned therein, and that part payments were made only on an ad hoc basis pending final settlement, which cannot be treated as acknowledgment of liability for the entire claim.

23. It is also contended that the plaintiff/ respondent is not entitled to claim a percentage of project cost, as the project cost itself was neither finalised nor audited, and therefore any claim based on percentage is inherently speculative and unenforceable, and the Trial Court failed to appreciate that the contract, if any, did not fix the quantum of consideration, rendering it void for uncertainty.

24. Further, the learned counsel for the appellant submits that the plaintiff/respondent failed to complete the work and that there were serious deficiencies in execution, including improper cable alignment and wrong certification of transformers, which resulted in financial loss to the defendant, and such deficiencies are evidenced through documents such as Ex.B37 and



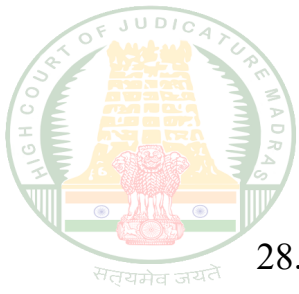
technical assessments, and therefore the plaintiff/respondent is not entitled to any remuneration, much less the amount claimed.

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25. *Per contra*, the learned counsel for the respondent/plaintiff would submit that the judgment and decree of the Trial Court are well-reasoned, based on proper appreciation of evidence, and do not warrant interference.

26. It is contended by the Learned counsel for the respondents that the existence of a valid and enforceable contract stands clearly established through Ex.A1 and the subsequent conduct of the parties, and it is settled law that a contract need not be formally executed in writing and can be inferred from conduct, particularly where one party performs services and the other knowingly accepts and benefits from the same; in the present case, the defendant not only permitted the plaintiff/respondent to carry out consultancy, supervision, and monitoring work but also made part payments, thereby evidencing acceptance.

27. The learned counsel for the respondent further submits that the contention regarding absence of privity is wholly untenable, as all dealings were with the concern "Power Sys Roof," which continued under the proprietorship of the plaintiff/respondent after dissolution of the partnership, and the defendant/appellant cannot approbate and reprobate by accepting services and thereafter denying the relationship.



28. The learned counsel for the respondent on the objection under Section 69(2) of the Partnership Act, submits that the same is misconceived, as the contract was substantially performed by the plaintiff/respondent after the dissolution of the partnership firm and the rights and liabilities had vested in the plaintiff/respondent under Ex.A20, and in any event, the bar under Section 69(2) is not attracted to suits filed for realization of assets of a dissolved firm, and in this regard reliance is placed on the judgment in ***Shree Gomathy Shankar Transports v. State of Karnataka (2010 (4) CTC 58)***, wherein it has been held that dissolution does not extinguish the right to recover dues, and similar principles have been recognised in decisions reported in ***AIR 1984 Madras 47 and 2007 (1) MLJ 623***, which were rightly relied upon by the Trial Court.

29. The learned counsel for the respondent further contends that the bills raised under Ex.A7 to Ex.A10 are not unilateral but are based on the agreed terms under Ex.A1, which provided for consultancy and supervision charges at 5% of the project cost, and significantly, the defendant/appellant has not produced any contra accounts or disputed the project cost figures, and therefore the bills stand proved.

30. It is further submitted that the respondent is entitled to remuneration



even if the project was not fully completed, as the nature of work was consultancy and supervision, and once services are rendered and benefit is derived, compensation becomes payable, and the defendant/appellant2 cannot unjustly enrich itself by refusing payment after availing services.

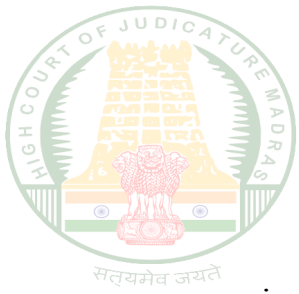
31. The learned counsel for the respondent also submits that the technical committee report relied upon by the defendant Ex. B9 is of no evidentiary value, as it was prepared unilaterally without notice to the plaintiff/respondent and cannot override the contractual obligations or the evidence of services rendered.

32. The learned counsel for the respondent on the question of non -joinder submits that Mounagurusamy was neither a necessary nor proper party, as he acted only on behalf of the plaintiff/respondent concern and had no independent contractual rights, and therefore the suit is perfectly maintainable.

33. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

34. The following issues have arisen for consideration:-

a) Whether the Court below was right in holding that there was a concluded contract?



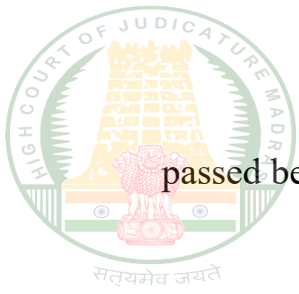
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b) Whether Court below was right in granting a decree and judgment of recovery of money for the services rendered?

Issue (a):-

35. The contentions that had been raised by the appellants is that there was no privity of contract between the respondent and itself. Admittedly, there has been an offer letter issued by the appellant to the partnership firm and thereafter works were also entrusted to the said firm. It is the case of the respondent that thereafter, the partnership came to be dissolved, she had taken over as the proprietor of the said concern. From various exhibits, it could be seen that during the period when works were executed, bills were raised in the name of the plaintiff as proprietor and there has been no demur or whisper from the appellant either by returning the bills as raised by the plaintiff on the ground that there was no contract between the plaintiff as a proprietorship concern and the appellant nor there was any query by them as to why subsequent bills were being raised by the proprietorship concern. In that aspect, it could only be considered that the appellant had acquiesced with the status of the firm with which had issued the letter of offer under Ex.A1.

36. It had been vehemently contested by the appellant that there has been no privity of contract between the parties as there was no concluded contract between the them particularly agreeing to a definite consideration that is to be



passed between them.

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37. It is not the case of the appellants that pursuant to the offer letter issued by the respondent under Ex.A1, they have not engaged the respondent for any services. On the other hand, after the offer letter was received under Ex.A1, payments have also been made pursuant to the services rendered by the respondent and it is the further claim of the appellant that the respondent had abandoned the services. When that being so, it can be safely concluded that even though, there was no written contract between the parties, there has been an implied contract between them upon which the appellant had enjoyed the services rendered by the respondent. Had there has been a dispute with regard to the consideration for the services, the appellants would not have released the first payment as raised by the respondent under Exs.A3,4 & 6. On such consideration, this Court is of the view that there was a concluded contract between the parties and the appellant cannot wriggle out of his obligations under such contract.

ISSUE No.(b)

38. A primordial contention in this regard had been raised by the appellant by contending that the bills raised by the respondent have been unilateral. It is the claim of the appellant that the offer of the appellant was unilateral and was not based upon any prior discussions between the parties. It



is to be noted that when the bills were raised, the appellant have also made payments of the bills also under Ex.A3, 4 & 6 and in any of the said documents, they had not reserved their rights with regards to the bills raised pursuant to Ex.A1. This itself would mean that there has been an implied consent of the value for the services to be rendered by the respondent.

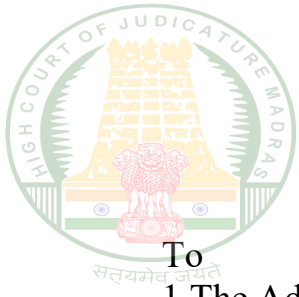
39. That apart, no contra evidence had been placed before this Court except an unilateral inspection report behind the back of the respondent which has been rightly rejected by the Court below. The evidence of PW1 with regards to the bills have also not been discredited by the appellants in cross-examining PW1. In such an event, this Court do not find any infirmity with the judgment and decree quantifying the amount.

40. For the aforesaid reasons, the Appeal suit fails and accordingly, dismissed. Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to costs.

12.06.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

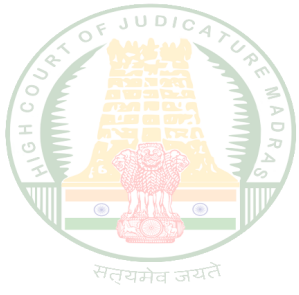
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To

1. The Additional District & Fast Track Court-IV,
Coimbatore, Tiruppur.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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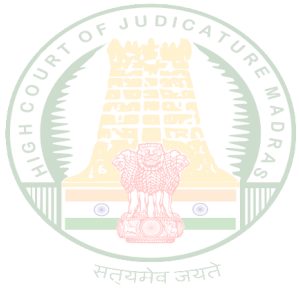


K.KUMARESH BABU, J.

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